

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 765 of 1999

WITH

CIVIL REVISION APPLICATION NO 766 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.PARIKH

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

LEGAL HEIRS OF DECD. DARUBHAI JIBHAI

Versus

FULABHAI RANCHODBHAI PATEL

Appearance:

MR BS PATEL for Petitioners

MR RA PATEL for Respondent No. 1

CORAM : MR.JUSTICE M.S.PARIKH

Date of decision: 28/04/99

ORAL JUDGEMENT

Rule. Service of rule waived by Mr. R.A. Patel, learned advocate for the respondents in both the revision applications.

2. At the outset it may be noted that both the learned advocates wanted this Court to make separate note

of submissions with regard to what transpired before the learned trial Judge. Hence, their submissions are noted in the first instance.

3. Mr. B.S. Patel, learned advocate for the petitioners submitted before this Court that on 6/4/1999 the petitioners (original judgment debtors) submitted objections exh. 13. The matter was then adjourned to 8/4/1999 and from the certified copy of the Rojnama, which has been submitted in the form of xerox copy, it would appear that the matter was adjourned for issuing notice to defendant no. 2 (judgment debtor no.2). Some exh. 14 is also noted in the Rojnama of 8/4/1999. The matter was adjourned to 9/4/1999 for seeing that the process is served to the defendant no.2. On 9/4/1999 the first part of the Rojnama indicates that the learned advocate for the plaintiffs was present and that the notice of defendant no. 2 had been received back duly served. Then there is other part of the Rojnama on the same day, but there is a date '9/4/1999' once again written and there it has been recorded in vernacular to the effect : advocate/s present. Heard. No. 2 is served with the notice. Below such type of Rojnama in Gujarati there is number '15' indicating that there is some application exh. 15 moved by defendant no.2's advocate. Mr. B.S. Patel submits that this is the application for determining the issues/points for determination arising from the objections exh. 13 filed by the judgment debtors. That application is stated to be rejected in the Rojnama. Mr. B.S. Patel also submits that on 9/4/1999 that application exh. 15 was dismissed and that is how one of the aforesaid two revision applications has been before this Court. On the right side of the Rojnama there is an endorsement of date 14/4/1999-12/4. That would indicate that the matter was adjourned to 14/4/1999 and/or 12/4/1999. Mr. B.S. Patel submitted that there was an application exh. 19 which was moved by the judgment debtors praying for staying the proceedings of the matter as the judgment debtors wanted to move an appropriate proceedings before the higher Court. That exh. 19 finds its place in the Rojnama of 12/4/1999. Before that there are exhs. 16, 17 and 18 respectively described as application for adjournment from defendants, application for production of documentary evidence and list of documents respectively. On the right hand side there appears date 13/4/1999 indicating that the matter was adjourned to 13/4/1999. On 13/4/1999 the Rojnama indicates that the application exh. 19 was heard. So is the submission of Mr. B.S. Patel before this Court. Then there is a reference of exh. 20 stating about some list of

documents, but the Rojnama is not completely legible. Then there is an indication of the matter having been adjourned for passing order on application exh. 19 to 15/4/1999 and then to 16/4/1999 and then to 17/4/1999. The Rojnama of 17/4/1999 indicates reference of exh. 19 and exh. 1. It has been submitted by Mr. B.S. Patel that the matter was adjourned to 19/4/1999 as per that Rojnama, but according to his submission exh.1 is added subsequently. From the Rojnama of 19/4/1999 it would appear that the order below exh. 19 as well as exh. 1 has been passed on that date.

4. As against what has been submitted by Mr. B.S. Patel, learned advocate for the petitioners, Mr. R.A. Patel, learned advocate for decree holders has submitted that on 6/4/1999 reply on objections was filed at exh. 13. On 8/4/1999 the matter was adjourned for hearing. It has, however, been submitted by Mr. R.A. Patel, learned advocate for decree holders that on 9/4/1999 the matter was already heard for exh. 1 and the matter was simultaneously adjourned for passing orders on exh. 1. On 9/4/1999 matter was heard for exh. 1 although application exh. 15 was given for raising points of determination/issues. Accordingly the matter was adjourned to 14/4/1999, but since the judgment debtors moved application exh. 19 on 12/4/1999, the matter was adjourned to the respective dates 13/4/1999, 15/4/1999, 16/4/1999, 17/4/1999 and 19/4/1999 and on 19/4/1999 the Court passed orders on application exh. 19 as well as main application, namely execution application exh. 1.

5. I have noted the above submissions in the context of having verified the certified copy (certified copy on xerox) of the Rojnama, which has been permitted to be placed on record of C.R.A. No. 765 of 1999. It clearly appears from the plain reading of the Rojnama that there is something wrong in recording of the Rojnama as on 9/4/1999, which indicates subsequent adjournment to 14/4/1999- 12/4/99, particularly bearing in mind the fact that the 14/4/1999 was Ambedkar Jayanti and particularly bearing in mind the fact that there is a subsequent Rojnama of 12/4/1999 and 13/4/1999. It is possible that the learned advocates or either of them might have approached the Court on such dates as recorded in the Rojnama of 12/4/1999 and 13/4/1999 and consequent upon such a proceeding being undertaken by the learned advocates/learned advocate the Rojnama might have been required to be written. Judicial notice can be taken about the Rojnama being written by either Clerk of the Court or some Clerk entrusted with the work of writing Rojnama and the learned Judge is required to sign the

Rojnama. Be that it may, the matter is required to be inquired into by the learned District Judge in so far as the state of affairs appearing on the face of the aforesaid Rojnama are concerned.

6. Now coming to the merits of the matter, both the learned advocates appearing for the parties have jointly submitted that no points for determination might be raised by the trial Court and the order rejecting the application for raising of points of determination might be maintained, but the learned trial Judge be directed to hear the execution application exh.1 and the objections exh. 13 on the date that might be fixed by this Court here itself. They have also made statement at bar that they will inform their counterparts about the date fixed by this Court and upon their failure to appear before the trial Court, it would be open to the learned trial Judge to pass appropriate order considering exh. 1 and exh. 13. In that view of the matter, following directions are issued :-

I. The impugned order passed by the learned trial Judge (executing Court) below application exh. 1 is hereby set aside, whereas the impugned order passed below exh. 15 for raising points of determination is maintained.

II. The matter is remanded to the learned trial Judge (executing Court) to hear application exh. 1 and objections exh. 13 on 4/5/1999 itself as stated at the bar by Mr. B.S. Patel as well as Mr. R.A. Patel and they undertake to inform their counterparts that they will appear before the learned trial Judge/executing Court for hearing of exh. 1/ exh. 13.

III. The learned trial Judge without adjourning the matter on 4/5/1999 will decide the application exh. 1 and objections exh. 13 and pass appropriate orders in accordance with law.

IV. A copy of this order will be immediately sent by this office to the learned District Judge alongwith with the papers of Rojnama placed on the record of the case, to inquire into the matter and submit report to this Court immediately.

Accordingly rule is discharged in Civil Revision Application No. 765 of 1999, which is filed against order below exh. 15 and rule is made

absolute in Civil Revision Application No. 766
of 1999 which is filed against order below exh.
1. There shall be no order as to cost.

* * *

PVR.